



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1996

Ms. Doreen E. McGookey
Assistant City Attorney
City of Dallas
501 Police & Courts Building
Dallas, Texas 75201

OR96-1801

Dear Ms. McGookey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100902.

The City of Dallas Police Department (the "city") received a request for access to or copies of certain completed Internal Affairs Division ("IAD") investigation files regarding certain "control numbers," as well as the "complaint sheets of all IAD citizen complaints currently pending against Detective Steven O'Brien of the Youth and Family Crimes Division." You have submitted to this office for review a copy of the request letter and the requested information, labeled as Exhibits 1-5. You assert that the information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We understand that Dallas is a civil service city under the Texas Local Government Code. Accordingly, portions of the requested information may be excepted from disclosure under section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Such records are subject to release under chapter 552 of the

Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).¹

We are unable to determine whether the documents you submitted to us for review are part of the files maintained by the police department under section 143.089(g). If they are, the city must withhold the documents from disclosure under section 552.101 as information deemed confidential by statute. Nevertheless, we will address your arguments against disclosure in the event that the documents submitted to this office are not part of the police department's section 143.089(g) files.

Specifically, you assert that documents submitted as Exhibit 1 are excepted from required public disclosure under section 51.14 of the Family Code, as information made confidential by law. The files designated as Exhibit 1 pertain to the way in which several police officers conducted themselves when dealing with juvenile offenders. The juvenile conduct described in these files took place during or prior to the year 1995. Therefore, the release of these records is governed by former Family Code section 51.14(d). Section 51.14(d) of the Family Code was repealed by the Seventy-fourth legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. However, the repealing bill provides that "[c]onduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. The applicable law in effect in 1995 was Family Code section 51.14 which provided, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, repealed by Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. See also Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to "police blotter" and related information). You do not indicate that the information at issue here relates to charges for which the city transferred

¹We note that section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

the juvenile under section 54.02 of the Family Code² to a criminal court for prosecution, nor that article 15.27 of the Code of Criminal Procedure³ applies. Moreover, it does not appear that any of the exceptions to former section 51.14(d) to apply here. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (former Fam. Code § 51.14(d)(1), (2), (3)). Accordingly, we conclude that the city must withhold juvenile suspect statements, offense reports documenting alleged juvenile conduct, and all other information in Exhibit 1 that identifies or tends to identify juveniles. Such information is excepted from disclosure under section 552.101 of the Government Code as information deemed confidential by law.

The documents submitted as Exhibit 2 are medical records prepared by physicians. You cite section 5.08(b) of article 4495b, V.T.C.S., for the proposition that these medical records are confidential by law. Section 5.08(b) of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

As the documents at issue are medical records generated by physicians, the documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* § 5.08(c), (j).

We also note that Exhibit 3 may contain criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") which is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS

²Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, *amended by* Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

³Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, any information which may be CHRI generated by TCIC and NCIC is excepted from required public disclosure by section 552.101 of the Government Code.

Exhibit 5 is a polygraph examiner's summary of an examination administered to a juvenile suspect. You claim that section 19A of article 4413(29cc), V.T.C.S. makes the information in Exhibit 5 confidential. Section 19A provides:

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

Section 19A(b) makes Exhibit 5 confidential in the city's hands, and therefore it is excepted from required public disclosure by section 552.101 of the Government Code.

You assert that the documents submitted as Exhibit 4 are protected from disclosure as attorney-client communication, therefore you seek to withhold the documents pursuant to sections 552.101 and 552.107 of the Government Code.⁴ Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. Section 552.107(1) excepts information from disclosure if:

[I]t is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. However, section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memos sent. Open Records Decision No. 574 (1990) at 5. As the

⁴Although early open records decisions permitted governmental bodies to withhold from disclosure information within the attorney-client privilege pursuant to section 552.101, the privilege is specifically covered under section 552.107(1). Section 552.107 is the appropriate section to cite when seeking to withhold from disclosure communications between the governmental body and its legal counsel. *See* Open Records Decision No. 574 (1990).

documents labeled Exhibit 4 consist entirely of an attorney's advice and opinion, the documents are excepted from disclosure by section 552.107(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large initial "S" that loops around the first part of the name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/cbh

Ref.: ID# 100902

Enclosures: Marked documents

cc: Mr. Todd Bensman
Reporter
The Dallas Morning News
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(w/o enclosures)